

AMENDED IN ASSEMBLY MAY 7, 2001

AMENDED IN ASSEMBLY APRIL 25, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 160

**Introduced by Assembly Members Bates, Cohn, Alquist, Bill
Campbell, Diaz, Florez, Pescetti, and Richman**
*(Coauthors: Assembly Members Steinberg, Robert Pacheco,
Corbett, Dutra, Harman, Jackson, Longville, and Shelley)*
(Coauthors: Senators Karnette and Kuehl)

January 31, 2001

An act to amend ~~Section 6380~~ *Sections 6380 and 6383* of the Family Code, and to amend Section 136.2 of the Penal Code, relating to victim and witness intimidation.

LEGISLATIVE COUNSEL'S DIGEST

AB 160, as amended, Bates. Domestic violence: protective orders.

Existing law provides that if a defendant is charged with a domestic violence crime, the court with jurisdiction over that matter may, upon a good cause belief that harm, intimidation, or dissuasion of a victim or witness has occurred or is reasonably likely to occur, issue specified orders, including restraining or protective orders against the defendant. Existing law further provides that a restraining or protective order issued in a domestic violence criminal case has precedence over any other court order against the defendant.

This bill would state the Legislature's findings and declarations with respect to the relationship between civil and criminal restraining or protective orders. This bill would specify that the *criminal* restraining

order or protective order has precedence over any civil court order *that pertains to the same persons*. This bill would prohibit courts with jurisdiction over civil matters from issuing orders that are not in compliance with a restraining or protective order issued against a defendant in a domestic violence criminal case. This bill would further prohibit courts with jurisdiction over domestic violence criminal cases from issuing restraining or protective orders against a defendant that allow a civil court to compromise the protections provided by the order. ~~Finally, this~~ This bill would provide that restraining or protective orders issued in domestic violence criminal cases shall remain in force throughout a defendant's sentence, including incarceration, probation, and parole and shall state the date that they expire. *In addition, this bill would direct the Judicial Council of California to promulgate a protocol, for adoption by local courts, to provide for coordination of all orders regarding the same persons. This bill would require that the protocol permit family or juvenile court orders to coexist with criminal court orders as long as the orders are consistent and protect the safety of the parties, as specified.*

Existing law requires the Department of Justice to maintain a Domestic Violence Restraining Order System containing information regarding various protective and restraining orders and injunctions, including orders to protect victims of violent crime from specified types of contact with the defendant. Under existing law, when a court issues an order to protect a victim of violent crime from contact with the defendant, the court or its designee must transmit that order to law enforcement personnel within one business day. Existing law further provides that specified information regarding the order must be transmitted to the Department of Justice for inclusion in the Domestic Violence Restraining Order System.

This bill would require a court that modifies, extends, or terminates an order protecting a victim of violent crime from contact with the defendant to transmit that modification, extension, or termination to the law enforcement agency that entered the protective order into the Domestic Violence Restraining Order System. This bill would also require modifications, extensions, and terminations of orders protecting victims of violent crime from contact with the defendant to be issued on forms adopted by the Judicial Council of California and approved by the Department of Justice.

By imposing new reporting duties on local law enforcement agencies, this bill would impose a state-mandated local program.



The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares as follows:
- 2 (a) In those cases in which a complaint, information, or
- 3 indictment charging a crime of domestic violence, as defined in
- 4 Section 13700 of the Penal Code, has been issued, a restraining
- 5 order or protective order against the defendant issued by the
- 6 criminal court has precedence over any civil restraining or
- 7 protective order, including those issued in family law or
- 8 dependency court, issued before or after the criminal protective
- 9 order, only to the extent that the civil restraining or protective
- 10 order conflicts with the criminal protective order.
- 11 ~~(b) If there are either civil restraining or protective orders and~~
- 12 ~~criminal restraining or protective orders regarding the same~~
- 13 ~~parties, the peace officer shall enforce the most recent criminal~~
- 14 ~~order to the extent that it conflicts with the civil protective or~~
- 15 ~~restraining orders only. Nothing in this section shall preclude or~~
- 16 ~~limit the right of a victim of domestic violence to apply for civil~~
- 17 ~~restraining orders. The protective orders provided in this section~~
- 18 ~~are in addition to any other civil or criminal remedies that may be~~
- 19 ~~available to the witness.~~
- 20 ~~(c) Cases in which a complaint, information, or indictment~~
- 21 ~~charging a crime of domestic violence, as defined in Section 13700~~
- 22 ~~of the Penal Code, has been issued, and in which the courts have~~
- 23 ~~issued both civil and criminal protective orders regarding the same~~
- 24 ~~parties, are the most egregious civil cases of domestic violence.~~

1 Contact between the defendant and victim or witness may
2 intimidate or place the victim or witnesses in jeopardy. The
3 Legislature recognizes that the defendant and the victim or witness
4 may have a child or children in common, and civil protective or
5 restraining orders may contain provisions that permit contact
6 between the parties for exchange of the child or children,
7 providing an exception to the criminal protective order. It is the
8 intent of the Legislature to permit visitation between a defendant
9 and his or her children pursuant to civil court orders, but at the
10 same time to ensure the safety of the victim or witness. ~~In order to~~
11 ~~ensure the safety of the victim and the children, and to protect the~~
12 ~~defendant's right to visitation with his or her children, the~~
13 ~~Legislature finds that it is the burden of the defendant to apply to~~
14 ~~the civil court for an order that permits the exchange of minors~~
15 ~~without contact with the victim or witness, in compliance with the~~
16 ~~criminal protective order.~~

17 SEC. 2. Section 6380 of the Family Code is amended to read:

18 6380. (a) Each county, with the approval of the Department
19 of Justice, shall, by July 1, 1996, develop a procedure, using
20 existing systems, for the electronic transmission of data, as
21 described in subdivision (b), to the Department of Justice. The data
22 shall be electronically transmitted through the California Law
23 Enforcement Telecommunications System (CLETS) of the
24 Department of Justice by law enforcement personnel, or with the
25 approval of the Department of Justice, court personnel, or another
26 appropriate agency capable of maintaining and preserving the
27 integrity of both the CLETS and the Domestic Violence
28 Restraining Order System, as described in subdivision (e). Data
29 entry is required to be entered only once under the requirements
30 of this section, unless the order is served at a later time. A portion
31 of all fees payable to the Department of Justice under subdivision
32 (a) of Section 1203.097 of the Penal Code for the entry of the
33 information required under this section, based upon the proportion
34 of the costs incurred by the local agency and those incurred by the
35 Department of Justice, shall be transferred to the local agency
36 actually providing the data. All data with respect to criminal court
37 protective orders issued, modified, extended, or terminated under
38 subdivision (g) of Section 136.2 of the Penal Code shall be
39 transmitted by the court or its designee within one business day to

1 law enforcement personnel by either one of the following
2 methods:

3 (1) Transmitting a physical copy of the order to a local law
4 enforcement agency authorized by the Department of Justice to
5 enter orders into CLETS.

6 (2) With the approval of the Department of Justice, entering the
7 order into CLETS directly.

8 (b) Upon the issuance of a protective order to which this
9 division applies pursuant to Section 6221, or the issuance of a
10 temporary restraining order or injunction relating to harassment or
11 domestic violence pursuant to Section 527.6 or 527.8 of the Code
12 of Civil Procedure, or the issuance of a criminal court protective
13 order under subdivision (g) of Section 136.2 of the Penal Code, or
14 the issuance of a juvenile court restraining order related to
15 domestic violence pursuant to Section 213.5, 304, or 362.4 of the
16 Welfare and Institutions Code, or the issuance of a protective order
17 pursuant to Section 15657.03 of the Welfare and Institutions Code,
18 or upon registration with the court clerk of a domestic violence
19 protective or restraining order issued by the court of another state,
20 as defined in Section 145, or a military tribunal or tribe, and
21 including any of the foregoing orders issued in connection with an
22 order for modification of a custody or visitation order issued
23 pursuant to a dissolution, legal separation, nullity, or paternity
24 proceeding the Department of Justice shall be immediately
25 notified of the contents of the order and the following information:

26 (1) The name, race, date of birth, and other personal descriptive
27 information of the respondent as required by a form prescribed by
28 the Department of Justice.

29 (2) The names of the protected persons.

30 (3) The date of issuance of the order.

31 (4) The duration or expiration date of the order.

32 (5) The terms and conditions of the protective order, including
33 stay-away, no-contact, residency exclusion, custody, and
34 visitation provisions of the order.

35 (6) The department or division number and the address of the
36 court.

37 (7) Whether or not the order was served upon the respondent.

38 (8) The terms and conditions of any restrictions on the
39 ownership or possession of firearms.

1 All available information shall be included; however, the
2 inability to provide all categories of information shall not delay the
3 entry of the information available.

4 (c) The information conveyed to the Department of Justice
5 shall also indicate whether the respondent was present in court to
6 be informed of the contents of the court order. The respondent's
7 presence in court shall provide proof of service of notice of the
8 terms of the protective order. The respondent's failure to appear
9 shall also be included in the information provided to the
10 Department of Justice.

11 (d) Immediately upon receipt of proof of service the clerk of the
12 court, and immediately after service any law enforcement officer
13 who served the protective order, shall notify the Department of
14 Justice, by electronic transmission, of the service of the protective
15 order, including the name of the person who served the order and,
16 if that person is a law enforcement officer, the law enforcement
17 agency.

18 (e) The Department of Justice shall maintain a Domestic
19 Violence Restraining Order System and shall make available to
20 court clerks and law enforcement personnel, through computer
21 access, all information regarding the protective and restraining
22 orders and injunctions described in subdivision (b), whether or not
23 served upon the respondent.

24 (f) If a court issues a modification, extension, or termination of
25 a protective order, it shall be on forms adopted by the Judicial
26 Council of California and that have been approved by the
27 Department of Justice, and the transmitting agency for the county
28 shall immediately notify the Department of Justice, by electronic
29 transmission, of the terms of the modification, extension, or
30 termination.

31 (g) The Judicial Council shall assist local courts charged with
32 the responsibility for issuing protective orders by developing
33 informational packets describing the general procedures for
34 obtaining a domestic violence restraining order and indicating the
35 appropriate Judicial Council forms, and shall include a design, that
36 local courts shall complete, that describes local court procedures
37 and maps to enable applicants to locate filing windows and
38 appropriate courts. The court clerk shall provide a fee waiver form
39 to all applicants for domestic violence protective orders. The court
40 clerk shall provide all Judicial Council forms required by this



chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, as defined in Section 145, or on a reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, “electronic transmission” shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

(i) Only protective and restraining orders issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice shall be transmitted to the Department of Justice. However, this provision shall not apply to a valid protective or restraining order related to domestic or family violence issued by a court of another state, as defined in Section 145, a military tribunal, or a tribe. Those orders shall, upon request, be registered pursuant to Section 6380.5.

SEC. 3. *Section 6383 of the Family Code is amended to read:*

6383. (a) A temporary restraining order or emergency protective order issued under this part shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported domestic violence involving the parties to the proceeding.

(b) The petitioner shall provide the officer with an endorsed copy of the order and a proof of service ~~which~~ *that* the officer shall complete and transmit to the issuing court.

(c) It is a rebuttable presumption that the proof of service was signed on the date of service.

(d) Upon receiving information at the scene of a domestic violence incident that a protective order has been issued under this part, or that a person who has been taken into custody is the respondent to such an order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately inquire of the Department of Justice Domestic Violence Restraining Order System to verify the existence of the order.

(e) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the respondent of the terms of the order. Verbal notice of the

1 terms of the order is sufficient notice for the purposes of this
2 section and for the purposes of Section 273.6 and subdivision (g)
3 of Section 12021 of the Penal Code.

4 (f) If a report is required under Section 13730 of the Penal
5 Code, or if no report is required, then in the daily incident log, the
6 officer shall provide the name and assignment of the officer
7 notifying the respondent pursuant to subdivision (e) and the case
8 number of the order.

9 (g) Upon service of the order outside of the court, a law
10 enforcement officer shall advise the respondent to go to the local
11 court to obtain a copy of the order containing the full terms and
12 conditions of the order.

13 (h) There shall be no civil liability on the part of, and no cause
14 of action for, false arrest or false imprisonment against any peace
15 officer who makes an arrest pursuant to a protective or restraining
16 order ~~which~~ *that* is regular upon its face, if the peace officer in
17 making the arrest acts in good faith and has reasonable cause to
18 believe that the person against whom the order is issued has notice
19 of the order and has committed an act in violation of the order. If
20 there is more than one civil order regarding the same parties, the
21 peace officer shall enforce the order ~~which~~ *that* was issued last. If
22 there are both civil and criminal orders regarding the same parties,
23 the peace officer shall enforce the criminal order issued last,
24 *subject to the provisions of subdivisions (h) and (i) of Section 136.2*
25 *of the Penal Code.* Nothing in this section shall be deemed to
26 exonerate a peace officer from liability for the unreasonable use of
27 force in the enforcement of the order. The immunities afforded by
28 this section shall not affect the availability of any other immunity
29 which may apply, including, but not limited to, Sections 820.2 and
30 820.4 of the Government Code.

31 *SEC. 4.* Section 136.2 of the Penal Code is amended to read:

32 136.2. Upon a good cause belief that harm to, or intimidation
33 or dissuasion of, a victim or witness has occurred or is reasonably
34 likely to occur, any court with jurisdiction over a criminal matter
35 may issue orders including, but not limited to, the following:

36 (a) Any order issued pursuant to Section 6320 of the Family
37 Code.

38 (b) An order that a defendant shall not violate any provision of
39 Section 136.1.



1 (c) An order that a person before the court other than a
2 defendant, including, but not limited to, a subpoenaed witness or
3 other person entering the courtroom of the court, shall not violate
4 any provisions of Section 136.1.

5 (d) An order that any person described in this section shall have
6 no communication whatsoever with any specified witness or any
7 victim, except through an attorney under any reasonable
8 restrictions that the court may impose.

9 (e) An order calling for a hearing to determine if an order as
10 described in subdivisions (a) to (d), inclusive, should be issued.

11 (f) An order that a particular law enforcement agency within
12 the jurisdiction of the court provide protection for a victim or a
13 witness, or both, or for immediate family members of a victim or
14 a witness who reside in the same household as the victim or witness
15 or within reasonable proximity of the victim's or witness'
16 household, as determined by the court. The order shall not be made
17 without the consent of the law enforcement agency except for
18 limited and specified periods of time and upon an express finding
19 by the court of a clear and present danger of harm to the victim or
20 witness or immediate family members of the victim or witness.

21 For purposes of this subdivision, "immediate family members"
22 include the spouse, children, or parents of the victim or witness.

23 (g) Any order protecting victims of violent crime from contact,
24 with the intent to annoy, harass, threaten, or commit acts of
25 violence, by the defendant. The court or its designee shall transmit
26 orders made under this subdivision to law enforcement personnel
27 within one business day of the issuance, modification, extension,
28 or termination of the order, pursuant to subdivision (a) of Section
29 6380 of the Family Code. It is the responsibility of the court to
30 transmit the modification, extension, or termination orders made
31 under this subdivision to the same agency that entered the original
32 protective order into the Domestic Violence Restraining Order
33 System.

34 Any order issued, modified, extended, or terminated by a court
35 pursuant to this subdivision shall be issued on forms adopted by
36 the Judicial Council of California and that have been approved by
37 the Department of Justice pursuant to subdivision (i) of Section
38 6380 of the Family Code. However, the fact that an order issued
39 by a court pursuant to this section was not issued on forms adopted

1 by the Judicial Council and approved by the Department of Justice
2 shall not, in and of itself, make the order unenforceable.

3 Any person violating any order made pursuant to subdivisions
4 (a) to (g), inclusive, may be punished for any substantive offense
5 described in Section 136.1, or for a contempt of the court making
6 the order. A finding of contempt shall not be a bar to prosecution
7 for a violation of Section 136.1. However, any person so held in
8 contempt shall be entitled to credit for any punishment imposed
9 therein against any sentence imposed upon conviction of an
10 offense described in Section 136.1. Any conviction or acquittal for
11 any substantive offense under Section 136.1 shall be a bar to a
12 subsequent punishment for contempt arising out of the same act.

13 (h) (1) In all cases where the defendant is charged with a crime
14 of domestic violence, as defined in Section 13700, the court shall
15 consider issuing the above-described orders on its own motion. All
16 interested parties shall receive a copy of those orders. In order to
17 facilitate this, the court's records of all criminal cases involving
18 domestic violence shall be marked to clearly alert the court to this
19 issue.

20 (2) In those cases in which a complaint, information, or
21 indictment charging a crime of domestic violence, as defined in
22 Section 13700, has been issued, a restraining order or protective
23 order against the defendant issued by the criminal court in that case
24 has precedence over any civil court order, including a family law
25 or dependency court order, against the defendant *as the same*
26 *named victim or victims*. All subsequent orders shall comply with
27 and shall not compromise the criminal protective order. A criminal
28 protective order may not contain language either printed or
29 handwritten that will allow a civil or dependency court order to
30 compromise protections allowed under the criminal order to the
31 victim or victims named in the criminal case. The criminal
32 protective order shall remain in full force and effect for the
33 duration of the sentence, including incarceration, probation (either
34 summary or formal), and parole. The calendar date that the
35 criminal protective order expires shall be written on the order.

36 ~~(i) Custody and visitation with respect to the defendant and his~~
37 ~~or her minor children may be ordered by a family or juvenile court~~
38 ~~consistent with the protocol established pursuant to subdivision~~
39 ~~(i).~~

1 (i) On or before January 1, 2003, the Judicial Council shall
2 promulgate a protocol, for adoption by each local court in
3 substantially similar terms, to provide for the timely coordination
4 of all orders against the same defendant and in favor of the same
5 named victim or victims. The protocol shall permit a family or
6 juvenile court order to coexist with a criminal court protective
7 order subject to the following conditions:

8 (1) The terms of the order may not be contradictory.

9 (2) Any order that permits contact between the restrained
10 person and his or her children shall provide for the safe exchange
11 of the children, and the exchange shall not violate the terms of any
12 other order, including, but not limited to, “no contact” orders.

13 (3) Safety of all parties shall be the courts’ paramount concern.
14 The family or juvenile court shall specify the time, day, place, and
15 manner of transfer of the child, as provided in Section 3100 of the
16 Family Code.

17 (j) The Judicial Council shall adopt forms for orders under this
18 section.

19 ~~SEC. 4.~~

20 SEC. 5. Notwithstanding Section 17610 of the Government
21 Code, if the Commission on State Mandates determines that this
22 act contains costs mandated by the state, reimbursement to local
23 agencies and school districts for those costs shall be made pursuant
24 to Part 7 (commencing with Section 17500) of Division 4 of Title
25 2 of the Government Code. If the statewide cost of the claim for
26 reimbursement does not exceed one million dollars (\$1,000,000),
27 reimbursement shall be made from the State Mandates Claims
28 Fund.